

**From:** Bernhardt, David L.

**Sent:** Thursday, March 5, 2015 5:51 PM

**To:** Jason Peltier; Crag.manson@westlandswater.org

**Subject:** Fwd: Hearing Memo: House Natural Resources Hearing on FY2016 Budget for DOI

**Attachments:** March 5 2015 House Natural Resources Hearing on FY2016 Budget Request for DOI.docx; ATT00001.htm

I thought you would be interested I this write up.

**To:** Energy Environment and Resource Strategies

[<EnergyEnvironmentandResourceStrategies@BHFS.com>](mailto:EnergyEnvironmentandResourceStrategies@BHFS.com)

**Subject:** Hearing Memo: House Natural Resources Hearing on FY2016 Budget for DOI

All,

Attached is my summary of today's House Natural Resources Hearing on the FY2016 DOI budget request. Please let me know if you have questions.

Thanks,

Matt

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## **Memorandum**

Matthew D. Dermody  
Policy Advisor  
202.652.2352 tel  
202.296.7009 fax  
mdermody@bhfs.com

**DATE:** March 5, 2015

**TO:** Energy Environment and Resources Strategies Group

**FROM:** Matthew D. Dermody

**RE:** House Natural Resources Committee Hearing: "Examining the Department of the Interior's Spending Priorities and the President's Fiscal Year 2016 Budget Proposal."

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Today the House Natural Resources Committee held a hearing to examine the Fiscal Year 2016 budget request for the Department of the Interior (DOI). Chairman Rob Bishop (R-UT) led the hearing along with Ranking Member Raul Grijalva (D-AZ). The discussion focused on key policy issues facing DOI, including energy production on federal lands, the Endangered Species Act (ESA), and droughts facing many Western states.

### **Opening Statements**

Chairman Bishop began by noting that he found DOI's overall budget request "quite unimpressive," and criticized it for a lack of creative or innovative solutions to many pressing issues. He added that he believed the budget to be a reiteration of previous Obama Administration policies of additional taxes and fees, more regulation, and increased spending. Bishop said that it thus fell the Committee to step into the debate and propose new, creative solutions to the issues of managing natural resources. Bishop closed by saying that he did appreciate the more congenial and cooperative approach Secretary Jewell has brought to the Department, but that problems still persist with the agency and Obama Administration as a whole.

Ranking Member Grijalva argued that DOI's budget will be a net fiscal win for the federal budget because it proposes to spend \$13.2 billion while expecting to bring in \$13.8 billion in revenue in FY2016. He also stated that he supported the budget's concern about climate change and the need to undertake measures to address it, as well its proposal for full funding for the Land and Water Conservation Fund (LWCF). Grijalva argued that the budget must continue to elevate the importance of consultation with Native American tribes when energy and other development efforts are to be undertaken on or near tribal lands. He also asserted that the ESA is a vital part of federal conservation efforts, but is under attack by Republicans and various industries. Grijalva

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closed by saying that there are two distinct visions of public land management: one that involves the “seize and sell” approach to using federal lands primarily for development, and another that believes natural resources should be preserved for all Americans, and that he was eager to have that debate.

### **Witness Panel**

The Honorable Sally Jewell: Secretary, Department of the Interior: Jewell described the budget as “forward looking” and emphasized its commitment to jobs, responsible energy development on federal lands, community resilience, and enhancing the National Parks system. She added that the budget focuses on upholding commitments to Native American health and schools, full and permanent funding of LWCF at \$900 million per year, and efforts to celebrate the 100<sup>th</sup> anniversary of the National Park system. Jewell stated that the budget calls for \$100 million for investment in renewable energy production federal lands and \$658 million for conventional energy. She noted that DOI proposes to spend \$1.1 billion in science and technology research to better understand climate change, coastal erosion, invasive species and new energy technologies. Jewell concluded by discussing the budget’s support for drought relief in California and the rest of the West, and its effort to combat wildfires by allowing firefighting to be funded by disaster relief funds rather than from fire prevention funds at DOI.

The Honorable Michael Connor: Deputy Secretary, Department of the Interior: Connor did not give an opening statement but did participate in the question and answer session.

### **Question and Answer**

The first significant subject discussed during the question and answer period was the listing of several species under the Endangered Species Act. Rep. Cynthia Lummis (R-WY) began by asking Jewell about DOI’s interpretation of a rider placed into an appropriations measure last year preventing the Department from writing any rules to list the Greater Sage Grouse as Threatened or Endangered under ESA. Lummis noted that Jewell had said the rider doesn’t override DOI’s court-ordered obligation to decide whether or not the Sage Grouse should be listed, and asked her to explain this. Jewell answered that DOI intends to comply with the rider, adding that it only prevents the agency from writing the actual regulations to implement a listing, not to weigh the scientific evidence and decide if the Sage Grouse warrants listing or not. Lummis then noted that the Bureau of Land Management (BLM) and the Fish and Wildlife Service (FWS) have overlapping timelines in their planning processes that could complicate the ultimate decision on the Sage Grouse – some of which is dictated by court settlements – and asked Jewell if DOI would consider asking the courts for more time so that the deadlines don not conflict. Jewell answered that FWS and BLM have been working in very close coordination throughout the Sage Grouse process in addition to working with states and the private sector. Jewell said that the final debut of BLM’s Regional Management Plans (RMPs) will not be the first time the states will have seen them due to the long-standing coordination, and that although DOI could petition the court for additional time if needed, the hope is to complete the process on time by debuting the final plans in April and making a listing decision by September. Rep. Don Beyer (D-VA) asked if DOI had in fact asked for increased funding in the budget request for Sage Grouse conservation in order to help prevent an ESA listing. Jewell replied that this was the case, adding that the cooperation between states, federal agencies, and private industry has been unprecedented. Jewell said that she hopes this will continue and prevent a listing of the Sage Grouse. Rep. Crescent Hardy (R-NV)

noted that his state has a large portion of Sage Grouse habitat and has 87 percent of its land controlled by the federal government but must spend state money on a Sage Grouse conservation plan. He asked for specifics on the process moving forward, and what federal resources were being committed to help the states. Jewell answered that BLM is working very closely with Nevada and other states, adding that there is \$45 million in the budget to help BLM manage federal lands that contain Sage Grouse habitat. Jewell also said that she has signed a Secretarial Order to combat wildfire – the greatest threat to the Sage Grouse – and has also worked with ranchers who have committed to adopt voluntary conservation measures on their lands. Chairman Bishop noted that DOI has been helpful in working with some states, but not in others. He added that BLM’s management plans may or may not include habitat issues, and asked whether BLM was required to include such factors. Jewell said she has not imposed such a mandate on the plans, but noted that state plans are at various stages of development due to the fact that some states came to the table earlier than others. She also asserted that DOI still has to move forward due to court-imposed deadlines, but will do so while collaborating as much as possible with states and other stakeholders. Rep. Dan Benishek (R-MI) brought up the fact that the Grey Wolf was de-listed by Congress in 2011 after FWS recommended that the wolf no longer needed ESA protection, but that the decision was overturned by a recent court case. He asked Jewell if she agreed with FWS’ view that the wolf should no longer be listed. Jewell answered that she appreciated and agreed with FWS’ recommendation that the wolf is not in danger of going extinct and thus should be de-listed. Rep. Beyer argued that the wolf’s de-listing is not based on science, noted that he and other 79 other members of Congress had sent DOI a letter recommending the wolf be re-listed as a Threatened species which he claimed was more scientifically-defensible, and asked Jewell if she would support such a policy. Jewell answered that she believed FWS’ science was in fact sound, but pledged to look at the letter sent and give it consideration. Rep. Benishek then asked about the Northern Long Eared Bat, and asked when a decision would be made on its status. Jewell replied that the bat is under threat due to White Nose Syndrome (WNS), and that FWS has proposed a 4d rule to give guidance and certainty to the logging and energy industries to give them assurance which will allow them to continue their operations if the bat is listed under ESA. Benishek argued that the focus seems to be more on habitat for the bat, rather than WNS, which is the greater threat. Jewell answered that a considerable amount of money is allocated to combatting WNS, but noted that habitat is still important, and that the bats that survive WNS will need habitat where they can rehabilitate themselves. She added that the proposal is still in a draft stage, and is open for comment from the public and industries.

The second significant topic was energy production on federal lands. Rep. Doug Lamborn (R-CO) began by contending that the amount of energy produced on federal lands must increase to improve our economy and our security. He then asked Jewell if such a goal is a priority of DOI given the many regulations, fees and taxes the administration seeks to impose on the oil and gas industry on federal lands. Jewell said that DOI has been and is still committed to an “all of the above” energy strategy on federal lands, and that the budget reflects that. She agreed that energy production is important to our economy and national security, but added that in many cases the amount of acres offered for leasing is determined by market factors – such as the price of oil – which shape how inclined industry is to produce on federal lands. Lamborn then argued that many areas offshore have been withdrawn for possible drilling in DOI’s recent five year plans for Outer Continental Shelf (OCS) drilling. Jewell responded that DOI has put forth potential lease sales in the Atlantic for the first time in the current draft five year plan and has offered leases in the Beaufort and Chuckchi Seas off of Alaska as well. She added that the plan is currently in a

phase of public comment and that she welcomed input from members of the committee on which areas should be included before the plan is finalized. Rep. Garret Graves (R-LA) then discussed how the 2006 Gulf of Mexico Energy Security Act (GOMESA) established a formula for revenue sharing for Gulf Coast states that support energy production in federal waters off their shores, but that the percentage of funds returned to those states is only 37.5 percent as opposed to 50 percent that goes to states that have onshore energy production on federal lands. He asked Jewell why there was such a disparity, and why the administration's budget proposes taking away even that amount of revenue sharing. Jewell replied that the OCS is a federal water body and that it should be viewed differently than onshore production because the OCS is not within the physical boundaries of any state. Jewell also clarified that the budget only suggests Congress revisit the issue of GOMESA's revenue sharing, and that it is up to Congress to change the law if it wishes to do so. Rep. Ryan Zinke (R-MT) noted that his state has large coal reserves that reside on federal lands, but that DOI is proposing a coal valuation rule that would require mines to provide a net setback on the price that the coal is sold for if it is mined on federal lands. He asked Jewell to explain how this will streamline the federal permitting process for coal. Jewell answered that DOI has received criticism from the Government Accountability Office and its own Inspector General that there was inadequate regulation of companies using subsidiary companies to sell coal to at deflated prices to pay a lower royalty rate to taxpayers, who then sell the coal on the world market for much higher prices. She said that the rule's requirement to have coal be sold in an "at arms-length" transaction would rectify this and give a more fair return to the taxpayers. Rep. Matt Cartwright (D-PA) expressed his support for the proposed rule on the grounds that it will eliminate the unfair advantage Western coal companies have over mines in his state, and asked Jewell how far along the rulemaking is. Jewell replied that a study is being done of the issue of deflated prices being sold to subsidiary companies, and that it will inform the rulemaking so taxpayers can get a fair return. Rep. Alan Lowenthal (D-CA) asked about BLM's proposed rule to regulate hydraulic fracturing ("fracking") on federal lands, and asked if the final rule will contain provisions to address well construction and casement. Jewell said that the final rule will address those issues, which have been a major component of the rulemaking since the beginning of the process. Lowenthal then noted that many Republicans have argued against the fracking rule by saying it is unnecessary since states have their own regulations, and asked Jewell if there were other cases where DOI and states have matching or duplicating regulations. Jewell said that there are many such cases, and that DOI usually will yield to the states if the state rules are more stringent, as will be the case with the fracking rule. Lowenthal then said he hoped BLM "sets the bar high enough" for states in the fracking rule, and expressed concern about fracking fluid disclosure being conducted through the industry-created website FracFocus, which he said was not transparent enough and accommodated too many industry trade secrets. He then asked Jewell what the status was of using FracFocus in the new rule. Jewell said that she agreed on the importance of disclosure, but said that the amount of trade secret provisions accommodated in the rule will strike the balance between protecting the public and the competitiveness of individual fracking operators. She also added that FracFocus has been improved significantly, and will be used in the final rule to facilitate that disclosure. Rep. Lummis then asked whether or not states will be able to apply for a variance from the BLM rule if their own regulations are stricter than the federal standards. Jewell said that if a state has more stringent fracking rules than what BLM calls for, BLM will defer to the states and those will be the rules that operators within the state's borders will have to comply with.

The third significant line of discussion was the drought taking place in California and the water issues it is creating. Rep. Jim Costa (D-CA) argued that the accumulation of various ESA

and other environmental regulations over the years has hindered the ability of the Central Valley Project (CVP) to function in drought, and showed a chart demonstrating how CVP water contractors had received water allocation in previous drought years but did not receive any this year and will receive none this year. He asked why such rules prevent CVP from meeting its water supply obligations even in wet years. Deputy Secretary Connor answered that it is true that the entire water infrastructure issue is a critical one for California, but argued that it is a complicated one, adding that recent droughts have seen more dry and critically-dry days than past droughts, which has hindered downstream water allocations. Rep. Jared Huffman (D-CA) argued that the administration gets no credit for what it does to help mitigate drought, that there is more to the story than Costa's "cherry picked" chart indicates, and that there are actually minimal ESA regulations that allowing us to protect at-risk salmon species in his district. He asked Connor to discuss the amount of ESA pumping restrictions as they relate to the actual water allocations given to the CVP. Connor replied that there are both endangered species and water users are being drastically harmed by the drought, but noted that last year about 5 million acre feet of water was pumped. Rep. Costa then countered that his chart was not cherry picked, that it depicted similar dry periods of the past, and argued that it is not one single regulation hurting CVP pumping, but rather a whole series of them which have a cumulative effect. He then asked Connor why other areas in California have been receiving their water allocations but not the CVP. Connor said that the CVP may not be delivering to areas south of the Sacramento Bay Delta, but is doing so to areas north of the Delta.

### **Analysis**

Overall the hearing was very extensive and covered many issues relating to DOI's mission. It was a thorough and cordial discussion, but one that also mirrored the other recent DOI budget hearings that have occurred over the past few weeks. In addition to the aforementioned issues, many members discussed the centennial for the National Park system, or other parochial issues relating to their districts. Chairman Bishop was also very strict about holding members to their five minutes each of questions, so many members were forced to submit questions for the record for Secretary Jewell to answer.



**From:** Jason Peltier  
**Sent:** Thursday, February 26, 2015 9:36 AM  
**To:** David Bernhardt  
**CC:** Craig Manson  
**Subject:** FW: Hearing Memo: House Interior Appropriations Hearing on FY2016 Budget for DOI  
**Attachments:** February 25 2015 House Interior Appropriations Hearing on FY2016 Budget for DOI.docx

Also, here is Craig's WWD email address.

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**From:** Bernhardt, David L. [mailto:DBernhardt@BHFS.com]  
**Sent:** Wednesday, February 25, 2015 3:48 PM  
**To:** Jason Peltier (jpeltier@westlandswater.org); Craig Manson (cmanson@pacific.edu)  
**Subject:** FW: Hearing Memo: House Interior Appropriations Hearing on FY2016 Budget for DOI

I do not normally send these to you because I know you are inundated, but I thought you both might find this summary interesting.

Best,  
David

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## **Memorandum**

Matthew D. Dermody  
Policy Advisor  
202.652.2352 tel  
202.296.7009 fax  
mdermody@bhfs.com

**DATE:** February 25, 2015

**TO:** Energy Environment and Resources Strategies Group

**FROM:** Matthew D. Dermody

**RE:** House Appropriations Subcommittee on Interior, Environment, and Related Agencies Hearing: "FY2016 Budget Hearing for the Department of the Interior"

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Today the House Appropriations Subcommittee on Interior, Environment, and Related Agencies held a hearing to consider the Fiscal Year 2016 budget request for the Department of Interior (DOI). Chairman Ken Calvert (R-CA) led the hearing along with Ranking Member Betty McCollum (D-MN). The discussion focused on policy issues facing Interior including the Endangered Species Act (ESA), droughts in the West, and forthcoming regulations relating to coal mining.

### **Opening Statements**

Chairman Calvert began by listing fire suppression, the ESA, and drought as some of the most pressing issues that the committee and DOI must address. However, he also noted that current realities of the Budget Control Act (BCA) and the Sequester are forcing Congress and the administration to operate under tight budget constraints. Calvert argued that the 11 percent increase requested by DOI for FY2016 violates the BCA caps and ignores Sequester, which he said made the request "impossible and unworkable." Calvert expressed support for the budget's suggestion to treat the most severe wildfires in the same manner as other natural disasters so that fire suppression can be paid for with emergency funds and not by siphoning money from fire prevention, an idea previously proposed by other committee members as well. He stated that ESA is a significant challenge, adding that the legislation is long overdue for overhaul and reform. Calvert said the "deck is stacked in favor of listings" when it comes to ESA, while many recovered species linger in limbo for many years before getting de-listed. Calvert ended by discussing the drought affecting many Western states, and urged DOI not to repeat past mistakes that he said have made previous droughts worse than necessary.

Ranking Member McCollum's statement was brief, but she opened by asserting that the budget recognizes the obligation the federal government has to be a good steward and manager of public lands and natural resources. She praised the progress being made to improve Native American schools and health care, but added that more still needs to be done to fulfill those obligations. McCollum said she was encouraged by the level of commitment in the budget to the maintenance and restoration of the National Park system, as well on scientific research to help understand drought, combat invasive species, and address climate change. She closed by arguing that the budget should indeed repeal and move beyond the Sequester, especially since the FY2016 budget proposes to spend less than DOI did in 2005.

### **Witness Panel**

The Honorable Sally Jewell: Secretary, Department of the Interior: Jewell began her brief opening remarks by describing the budget request as a "forward-looking" one that is focused on investing in domestic energy, jobs, climate resilience, and national parks. She added that the budget also focuses on science to better show how to properly manage federal lands and resources, and strives to uphold federal trust and treaty obligations to Native Americans. Jewell noted that the budget proposes permanent, full funding of the Land and Water Conservation Fund (LWCF) at \$900 million, \$2.9 billion for the Bureau of Indian Affairs, \$589 million to improve national parks, \$100 million for renewable energy on federal lands, and \$658 million for conventional energy. Jewell closed by underscoring the need to move DOI and the rest of the Federal Government beyond Sequestration so that proper investments in all areas relating to federal lands can continue to take place.

Note: Deputy Secretary of Interior Michael Connor did not give an opening statement but did participate in the question and answer period.

### **Questions and Answers**

The first theme of the question and answer session was the Office of Surface Mining (OSM)'s forthcoming proposed stream buffer rule. Full Appropriations Committee Chairman Hal Rogers (R-KY) began by noting that states have the primacy when it comes to regulating coal mining's effects on streams, with DOI having an oversight role. He added that many states report not being properly consulted or listened to by DOI as the draft documents for the rule have been written, and asked Jewell what kind of cooperation has been given to the states in this process. Jewell answered that there has been excellent cooperation among all stakeholders, and that the proposed rule is close to being ready to publish. She said that once the rule is proposed there will be an extensive public comment period that will allow for more input from all sides. Jewell also added that this rule is attempting to update a 30 year old statute, and that a lot of knowledge has been acquired on the effects of coal mining since that time, thus requiring an extensive process. Rep. Evan Jenkins (R-WV) quoted a study indicating that the rule will save less than 15 miles of stream while having a negative impact on many coal mining regions, and asked Jewell if that figure was true. Jewell said she had not previously heard that figure, and was unfamiliar with it. Jenkins asked her if she could say how many miles of streams would actually be saved by the rule. Jewell said she did not know, but that the focus is more on the changes in hydrology that have occurred on federal lands due to coal mining. She added that there will be an extensive Environmental Impact Statement (EIS) which will address those points and be available for public comments. Jenkins asked Jewell what DOI was going to do to help the mining towns that will be

economically harmed by the rule. She said she understood that many coal areas are hurting, adding that this is primarily due to the fact much of the cheaper coal has been mined in Appalachia, but that much has also been learned about how coal affects local hydrology and this must be addressed without hurting the industry.

The second significant subject was the Endangered Species Act, most notably the potential listing of the Greater Sage Grouse. Rep. Mike Simpson (R-ID) began by noting that the budget requests Congress remove the provision included in last year's appropriations bill preventing DOI from writing a rule to list the Sage Grouse, and asked why this should be done. Jewell clarified that DOI has a court order to make an initial determination whether or not the listing of the Sage Grouse is warranted or not, and that a rule would not be written unless the Department decided it was warranted. She said that this still allows the agency to comply with the court order by deciding whether or not a listing was warranted without violating the law Congress passed. Deputy Secretary Connor also clarified that another reason DOI wants the rider removed is because it also covers the Gunnison Sage Grouse, which was listed as Threatened before the rider went into effect. Connor said that the rider prevents DOI from issuing a 4D rule to clarify what activities could be conducted in Gunnison Sage Grouse habitat, creating uncertainty for business and agriculture in Gunnison Sage Grouse habitat areas. Simpson then stated that he was concerned about unequal level of cooperation from some of the 11 states where the Sage Grouse resides, and that better-cooperating states will suffer negatively as was the case with the Grey Wolf. Jewell countered that there has been unprecedented cooperation between the Fish and Wildlife Service (FWS), the Bureau of Land Management (BLM), and states with the goal of preventing a listing in the first place. She added that all of the states and the federal agencies "will rise and fall together" on this issue due to the vast range of the Sage Grouse, but that she felt "very optimistic" that a listing can be averted due to the many conservation plans and commitments made by the states. Rep. Mark Amodei (R-NV) noted that even DOI has agreed wildfire, rather than manmade disturbances, is the number one threat to the Sage Grouse, but that FWS has focused too much on the latter. He asked Jewell whether anything could be done to rectify this, and what the state of communication was between FWS and DOI. Jewell answered that communication on this issue is very good, and that strong state and federal conservation plans are needed to help prevent an ESA listing. She agreed that fire is the greatest threat to the Sage Grouse, and that all stakeholders involved are trying to give FWS enough commitments and data to ensure the species' habitat will be protected in the future. Jewell said that this requires a landscape-level approach, which is being done for the Sage Grouse right now on a larger scale than ever before.

The third substantial line of discussion was the drought in California and the rest of the West. Chairman Calvert began by stating that the current drought is among the worst in history. He asked Deputy Secretary Connor for an update on the extent of the drought and how it compares to past years. Connor said this year's drought is every bit as bad as 2014, and that there is now even less water in storage basins, which will make the problem even worse as 2015 progresses. He added that in 2012 and 2013 the amount of water pumped was 4.2-4.8 million acre feet per year, but that number dropped by half last year. However, Connor asserted that only 2 percent of the water lost was due to ESA regulations and Biological Opinions relating to the conservation of the Delta Smelt. He added that lessons have been learned from past years and that DOI has improved its monitoring capabilities to determine where the fish actually are to allow maximum pumping of water when Smelt are not near the pumps. Calvert said he was glad to hear of improved monitoring but stated that the Biological Opinions are restricting the amount of water that can be

pumped to CVP water operators, citing the case of a recent storm boosting rainfall but resulting in no additional water due to ESA regulations. Connor replied that the Biological Opinions allow a maximum pumping at any time of 7500 cubic feet per second (cfs), and that during the storm the Bureau of Reclamation was pumping just over 7000 cfs for several days. He said the problem is that higher pumping requires more mitigation on the “back end” of stream areas which limits how long maximum pumping can take place. Calvert then stated that the Central Valley needs more water storage to help mitigate against both present and future droughts, and that the process for permitting storage projects must be expedited. He asked Connor what the status was of permitting such projects. Connor replied that DOI is “at the tail end” of feasibility studies and Environmental Impact Statements that are necessary for approval. Connor did not give exact timelines, but said he expects those reviews to be complete for several projects by the end of the Obama Administration, at which point funds will need to be found to facilitate the actual construction.

### **Analysis**

This hearing was very focused on issues relating to the ESA, California drought and water, and the Stream Buffer Rule. It also touched broadly on Native American schools, the National Park system’s centennial, and a series of parochial concerns relating to the districts of individual committee members. With the exception of Jenkins’ contentious exchange with Jewell on the effects of the Stream Buffer Rule, the discussion was cordial and non-inflammatory. Some discussion occurred between committee members about how or when the Budget Committee would issue budget allocations to the Appropriations Subcommittees so that the appropriations process can begin. It became clear that it is not fully known when this will occur, nor is there a clear path forward to move past the Sequester. However, Chairman Calvert indicated that the Subcommittee would continue to consult with the Department once the allocations are received to attempt to find a path forward on funding DOI and other agencies.

**From:** Bernhardt, David L.

**Sent:** Wednesday, February 25, 2015 4:50 PM

**To:** cmanson@westlandswater.org

**Subject:** FW: Hearing Memo: House Interior Appropriations Hearing on FY2016 Budget for DOI

**Attachments:** February 25 2015 House Interior Appropriations Hearing on FY2016 Budget for DOI.docx

Craig and Jason: I do not normally send these to you because I know you are inundated, but I thought you both might find this summary interesting.

Best,  
David

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## **Memorandum**

Matthew D. Dermody  
Policy Advisor  
202.652.2352 tel  
202.296.7009 fax  
mdermody@bhfs.com

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**TO:** Energy Environment and Resources Strategies Group

**FROM:** Matthew D. Dermody

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### **Opening Statements**

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pumped to CVP water operators, citing the case of a recent storm boosting rainfall but resulting in no additional water due to ESA regulations. Connor replied that the Biological Opinions allow a maximum pumping at any time of 7500 cubic feet per second (cfs), and that during the storm the Bureau of Reclamation was pumping just over 7000 cfs for several days. He said the problem is that higher pumping requires more mitigation on the “back end” of stream areas which limits how long maximum pumping can take place. Calvert then stated that the Central Valley needs more water storage to help mitigate against both present and future droughts, and that the process for permitting storage projects must be expedited. He asked Connor what the status was of permitting such projects. Connor replied that DOI is “at the tail end” of feasibility studies and Environmental Impact Statements that are necessary for approval. Connor did not give exact timelines, but said he expects those reviews to be complete for several projects by the end of the Obama Administration, at which point funds will need to be found to facilitate the actual construction.

### **Analysis**

This hearing was very focused on issues relating to the ESA, California drought and water, and the Stream Buffer Rule. It also touched broadly on Native American schools, the National Park system’s centennial, and a series of parochial concerns relating to the districts of individual committee members. With the exception of Jenkins’ contentious exchange with Jewell on the effects of the Stream Buffer Rule, the discussion was cordial and non-inflammatory. Some discussion occurred between committee members about how or when the Budget Committee would issue budget allocations to the Appropriations Subcommittees so that the appropriations process can begin. It became clear that it is not fully known when this will occur, nor is there a clear path forward to move past the Sequester. However, Chairman Calvert indicated that the Subcommittee would continue to consult with the Department once the allocations are received to attempt to find a path forward on funding DOI and other agencies.

**From:** Bernhardt, David L.

**Sent:** Wednesday, February 25, 2015 4:48 PM

**To:** Jason Peltier (jpeltier@westlandswater.org); Craig Manson (cmanson@pacific.edu)

**Subject:** FW: Hearing Memo: House Interior Appropriations Hearing on FY2016 Budget for DOI

**Attachments:** February 25 2015 House Interior Appropriations Hearing on FY2016 Budget for DOI.docx

I do not normally send these to you because I know you are inundated, but I thought you both might find this summary interesting.

Best,  
David

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## **Memorandum**

Matthew D. Dermody  
Policy Advisor  
202.652.2352 tel  
202.296.7009 fax  
mdermody@bhfs.com

**DATE:** February 25, 2015

**TO:** Energy Environment and Resources Strategies Group

**FROM:** Matthew D. Dermody

**RE:** House Appropriations Subcommittee on Interior, Environment, and Related Agencies Hearing: "FY2016 Budget Hearing for the Department of the Interior"

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Today the House Appropriations Subcommittee on Interior, Environment, and Related Agencies held a hearing to consider the Fiscal Year 2016 budget request for the Department of Interior (DOI). Chairman Ken Calvert (R-CA) led the hearing along with Ranking Member Betty McCollum (D-MN). The discussion focused on policy issues facing Interior including the Endangered Species Act (ESA), droughts in the West, and forthcoming regulations relating to coal mining.

### **Opening Statements**

Chairman Calvert began by listing fire suppression, the ESA, and drought as some of the most pressing issues that the committee and DOI must address. However, he also noted that current realities of the Budget Control Act (BCA) and the Sequester are forcing Congress and the administration to operate under tight budget constraints. Calvert argued that the 11 percent increase requested by DOI for FY2016 violates the BCA caps and ignores Sequester, which he said made the request "impossible and unworkable." Calvert expressed support for the budget's suggestion to treat the most severe wildfires in the same manner as other natural disasters so that fire suppression can be paid for with emergency funds and not by siphoning money from fire prevention, an idea previously proposed by other committee members as well. He stated that ESA is a significant challenge, adding that the legislation is long overdue for overhaul and reform. Calvert said the "deck is stacked in favor of listings" when it comes to ESA, while many recovered species linger in limbo for many years before getting de-listed. Calvert ended by discussing the drought affecting many Western states, and urged DOI not to repeat past mistakes that he said have made previous droughts worse than necessary.

Ranking Member McCollum's statement was brief, but she opened by asserting that the budget recognizes the obligation the federal government has to be a good steward and manager of public lands and natural resources. She praised the progress being made to improve Native American schools and health care, but added that more still needs to be done to fulfill those obligations. McCollum said she was encouraged by the level of commitment in the budget to the maintenance and restoration of the National Park system, as well on scientific research to help understand drought, combat invasive species, and address climate change. She closed by arguing that the budget should indeed repeal and move beyond the Sequester, especially since the FY2016 budget proposes to spend less than DOI did in 2005.

### **Witness Panel**

The Honorable Sally Jewell: Secretary, Department of the Interior: Jewell began her brief opening remarks by describing the budget request as a "forward-looking" one that is focused on investing in domestic energy, jobs, climate resilience, and national parks. She added that the budget also focuses on science to better show how to properly manage federal lands and resources, and strives to uphold federal trust and treaty obligations to Native Americans. Jewell noted that the budget proposes permanent, full funding of the Land and Water Conservation Fund (LWCF) at \$900 million, \$2.9 billion for the Bureau of Indian Affairs, \$589 million to improve national parks, \$100 million for renewable energy on federal lands, and \$658 million for conventional energy. Jewell closed by underscoring the need to move DOI and the rest of the Federal Government beyond Sequestration so that proper investments in all areas relating to federal lands can continue to take place.

Note: Deputy Secretary of Interior Michael Connor did not give an opening statement but did participate in the question and answer period.

### **Questions and Answers**

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**From:** Khachigian, Kenneth  
**Sent:** Thursday, November 6, 2014 4:52 PM  
**To:** Thomas Birmingham  
**CC:** Bernhardt, David L.  
**Subject:** Post Election Outlook  
**Attachments:** Post-Election Outlook.pdf

Tom:  
Our DC office — include Dave — put together this handy post-election outlook for the remainder of this year and for the new Congress.  
It may come in handy as you work to navigate the legislative shoals....and, as well, to inform the Board. I know Dave and his team can fill in the spaces we haven't covered.  
very best,  
Ken



**Kenneth L. Khachigian**  
Senior Partner

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## Post-Election Washington Outlook



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## Post-Election Analysis, the Lame Duck, and 114th Congress

Republicans far outpaced expectations on Tuesday, winning victory after victory in what turned out to be another wave election for the Grand Old Party. Many high-profile, open-seat Senate contests were won by double-digit margins while even well-established Democratic incumbents in Arkansas, Colorado and North Carolina could not muster enough support at the polls to hang on. In Louisiana, Sen. Mary Landrieu (D-LA) came up well short of the 50 percent she needed to avoid a runoff, which will now take place on December 6. At the time of this publication, Alaska and Virginia were still too close to call, though it seemed like they would split between parties. At a minimum, Republicans will have at least a 52-seat majority going into the 114th Congress, but this number is likely to expand once every vote is tallied.

Not to be outdone, the House Republican majority also grew by several seats, mostly as the result of open-race victories. However, there were also a handful of significant incumbent losses, particularly among Blue Dog Democrats, including Reps. John Barrow (D-GA) and Nick Rahall (D-WV). With a net gain of 14 seats and another 14 races still too close to call, Republicans are likely to start 2015 with their largest majority in the chamber since World War II.

To make matters worse for Democrats, the gubernatorial races also fared poorly for the party. Aside from a much-expected shakeup in the Pennsylvania governor's mansion, Republicans carried the day and painted a map that looks much more red now than it did Tuesday morning.

Many inside and outside the beltway are asking how Republicans turned a swell into a wave? First, much of the rationale for understanding the results of the election has been known for months. Democrats were fighting the "six-year itch" and were saddled with a president who is highly unpopular in many key swing and red states. In addition, Democratic voting blocs have historically lower turnout in mid-term elections when the White House is not in play.

According to exit polling, Democrats still largely carried the women's vote, which had been the main focus of ads in virtually every contest. However, Republicans won the male vote by a wider margin. The youth voting bloc also amounted to only 13 percent of the vote, which is down from 19 percent in 2012, while Hispanic voting numbers stayed flat. However, the idea that Hispanics turned away from Democrats, upset with the Obama administration for not acting unilaterally on immigration reform, is for the most part a red herring. Hispanics skewed more heavily toward Democratic candidates this year than in 2010.

While partisan fervor drove many Republicans to the polls, party leaders were quick to scale back their criticisms of Democrats and transition to offering hope for a bipartisan future in Congress. "Just because we have a two-party system doesn't mean we have to be in perpetual conflict," said Sen. Mitch McConnell (R-KY) in a victory speech. Other Republican leaders echoed these comments. Whether this cooperative atmosphere lingers and actually manifests in major accomplishments next year remains to be seen, but will continue to be the product of much speculation over the coming weeks.

To help inform your post-election thinking, below we provide a recap of the election results, outline issues that top the lame-duck agenda, and offer a look into the major policy debates that stakeholders in Washington should be prepared for next year.

## Senate Election Results at a Glance

*114th Congress: 45 Democrats to 52 Republicans (3 Outstanding Races)*

*Results as of 7:00pm on November 5, 2014*

**Republicans hold Mississippi, Alabama, Maine, Nebraska, Oklahoma, South Carolina, Texas, Idaho, Tennessee and Wyoming**

### **Kentucky (Republican Hold)**

Mitch McConnell (R) defeats Alison Lundergan Grimes (D) - 56% to 41%

### **Kansas (Republican Hold)**

Pat Roberts (R) defeats Greg Orman (I) - 53% to 43%

### **Georgia (Republican Hold)**

David Perdue (R) defeats Michelle Nunn (D) - 53% to 45%

### **West Virginia (Republican Pickup)**

Shelley Moore Capito (R) defeats Natalie Tennant (D) - 62% to 35%

### **Montana (Republican Pickup)**

Steve Daines (R) defeats Amanda Curtis (D) - 58% to 40%

### **Arkansas (Republican Pickup)**

Tom Cotton (R) defeats incumbent Mark Pryor (D) - 57% to 40%

### **Iowa (Republican Pickup)**

Joni Ernst (R) defeats Bruce Braley (D) - 52% to 44%

### **South Dakota (Republican Pickup)**

Mike Rounds (R) defeats Rick Weiland (D) - 51% to 29%

### **North Carolina (Republican Pickup)**

Thom Tillis (R) defeats incumbent Kay Hagan (D) - 49% to 47%

### **Colorado (Republican Pickup)**

Cory Gardner (R) defeats incumbent Mark Udall (D) - 49% to 45%

### **Alaska (Too Close to Call)**

Dan Sullivan (R) leading incumbent Mark Begich (D) - 49% to 45%

### **Louisiana (Runoff: December 6)**

Mary Landrieu (D) and challenger Bill Cassidy (R) fail to secure 50% of the vote

### **Virginia (Too Close to Call)**

Mark Warner (D) leading challenger Ed Gillespie (R) - 49% to 48.5%

### **New Hampshire (Democrat Hold)**

Jeanne Shaheen (D) defeats Scott Brown (R) - 52% to 48%

**Democrats hold Michigan, Virginia, Minnesota, Oregon, Illinois, New Mexico, New Jersey, Delaware, Hawaii, Rhode Island and Massachusetts**

## House Election Results at a Glance

114th Congress: 179 Democrats to 243 Republicans (13 Outstanding Races)  
Results as of 7:00pm on November 5, 2014

### REPUBLICAN

#### Incumbent Losses

Steve Southerland (R-FL)  
Vance McAllister (R-LA)  
Lee Terry (R-NE)

#### Open Seat Holds

Alabama's 6th – Palmer  
Arkansas's 2nd – Hill  
Arkansas's 4th – Westerman  
California's 25th – K  
California's 45th – Walters  
Georgia's 1st – Carter  
Georgia's 10th – Hice  
Maine's 2nd – Poliquin  
Georgia's 11th – Loudermilk  
Iowa's 3rd – Young  
Michigan's 4th – Moolenaar  
Michigan's 8th – Bishop  
Michigan's 11th – Trott  
Minnesota's 6th – Emmer  
Montana's At-Large – Zinke  
New Jersey's 3rd – MacArthur  
North Carolina's 6th – Walker  
Oklahoma's 5th – Russell  
Pennsylvania's 6th – Costello  
Texas' 4th – Ratcliffe  
Texas' 36th – Babin  
Virginia's 7th – Brat  
Virginia's 10th – Comstock  
Washington's 4th – Newhouse  
West Virginia's 2nd – Mooney

#### Open Seat Wins

Iowa's 1st – Blum  
New York's 21st – Stefanik  
North Carolina's 7th – Rouzer  
Utah's 4th – Love

### DEMOCRATIC

#### Incumbent Losses

Joe Garcia (D-FL)  
John Barrow (D-GA)  
Bill Enyart (D-IL)  
Brad Schneider (D-IL)  
Steven Horsford (D-NV)  
Carol Shea-Porter (D-NH)  
Tim Bishop (D-NY)  
Dan Maffei (D-NY)  
Pete Gallego (D-TX)  
Nick Rahall (D-WV)

#### Open Seat Holds

Arizona's 7th – Gallego  
California's 11th – DeSaulnier  
California's 33rd – Lieu  
California's 35th – Torres  
Hawaii's 1st – Takai  
Massachusetts' 6th – Moulton  
Michigan's 12th – Dingell  
Michigan's 14th – Lawrence  
New Jersey's 1st – Norcross  
New Jersey's 12th – Coleman  
New York's 4th – Rice  
North Carolina's 12th – Adams  
Pennsylvania's 13th – Boyle  
Virginia's 8th – Beyer

### Too Close to Call & Runoff Races (13) (Incumbents Bolded)

Arizona's 2nd: McSally (R) vs. <b>Barber (D)</b>	California's 26th: <b>Brownley (D)</b> vs. Gorell (R)
California's 7th: Ose (R) vs. <b>Bera (D)</b>	California's 31st: Aguilar (D) vs. Chabot (R)
California's 9th: <b>McNerney (D)</b> vs. Amador (R)	California's 52nd: DeMaio (R) vs. <b>Peters (D)</b>
California's 16th: Tacherra (R) vs. <b>Costa (D)</b>	Maryland's 6th: <b>Delaney (D)</b> vs. Bongino (R)
California's 17th: <b>Honda (D)</b> vs. Khanna (D)	New York's 25th: <b>Slaughter (D)</b> vs. Assini (R)
RUNOFF Washington's 4th: Newhouse (R) vs. Didier (R)	Louisiana's 5th – Mayo (D) vs. Abraham (R)
RUNOFF Louisiana's 6th: Edwards (D) vs. Graves (R)	

## Lame-Duck Session Outlook

The House and Senate will both return to Washington on Wednesday, November 12 for a lame-duck session. Leadership elections top the agenda for the first and second week in session. In the Senate, it is more than likely that Sen. McConnell will be elected majority leader and Sen. John Cornyn (R-TX) will be elected majority whip (or assistant majority leader). On the Democrat side, Sen. Harry Reid (D-NV) will likely be elected minority leader, despite the party's losses, and either Sen. Richard Durbin (D-IL) or Sen. Chuck Schumer (D-NY) will be elected minority whip. Minority leadership races will be filled with some tension and speculation. Be prepared for some drama and jockeying. House leadership elections will be more status quo.

In terms of legislating, House Speaker John Boehner (R-OH) has never had a strong appetite for major compromise when outgoing members are casting votes. Instead, he will look to move swiftly on the issues that must be addressed before a planned December 12 adjournment. Topping that "To-Do" list for both chambers are the following items:

- Omnibus-Minibuses-CR (current CR expires December 11)
- Internet Tax Freedom Act (ITFA) Extension (expires December 11)
- Terrorism Risk Insurance Reauthorization (expires December 31)
- Satellite Television Extension and Localism Act (STELA) Reauthorization (expires December 31)
- National Defense Authorization Act (NDAA) Renewal (expires December 31)
- Tax Extenders (retroactive extension needed for 2014)

Other issues to watch that may take up attention and/or floor time during the lame duck include:

- Vote on use-of-force authorization, supplemental funding re ISIL/Syria
- Bipartisan intelligence authorization bill
- Debate on Marketplace Fairness Act, allowing states to collect taxes from online retailers
- Ebola response efforts (supplemental request), proposed travel ban
- Congressional response to executive action on immigration reform and potential other issues (e.g., inversions or climate change)
- Consideration of AG Eric Holder's replacement, other top Department of Justice officials
- Votes on other executive (e.g., TSA administrator replacement) and judicial nominees

During the lame duck, we expect all of the "To-Do" items outlined above to be handled without major incidents, though some feuding is expected. The goal for Republicans, to some extent, is to "clear the decks" so that their congressional agenda is not consistently bogged down by major policy deadlines over which they have little control. This logic makes a long-term reauthorization of TRIA and passage of a defense authorization more likely than not. Congress has passed the NDAA every year for 53 years, but it has grown more difficult. In addition, there is also no certainty that a long-term TRIA reauthorization will move, despite widespread support from industry for a bipartisan Senate bill that won 93 votes earlier this year. On Wednesday evening, Speaker Boehner alluded to a possible short-term extension of TRIA in the lame duck. Other "To-Do" priorities could see a similar fate if a short-term punt becomes the default path of least resistance.

Looking at the other issues, both chambers seem poised to negotiate some form of an omnibus spending bill that will keep the government funded through FY2015, though all 12 appropriations bills may not make the final package (resulting in a "CR-Omnibus" scenario). An extension of ITFA and STELA could be attached to this

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effort or move as stand-alone items. We also expect an agreement on the much-watched tax extenders package, though whether it will be for a one-year (retroactive only for 2014) or two-year (to also include 2015) extension has yet to be determined. How this is handled, and whether or not any provisions are made permanent, could have repercussions for consideration of comprehensive tax reform next year.

Please note, we believe the lame duck could extend late into the year as current Majority Leader Reid uses all remaining time to jam through the White House's judicial and executive nominations before losing the Senate majority.



## Issues for the First 180 Days of the 114th Congress

When Congress convenes in January, members will quickly confront several major deadlines in the first six months of the year. These major policy fights will test the Republican leadership of each chamber and could very well define how the Republican Congress will work with a Democratic White House over the next two years.

- **February 2 – President Obama Required to Submit Budget:** There are no repercussions for missing the deadline, which will likely be the case next year. Without a new budget deal, full sequestration will resume in FY2016 and the president is expected to offer up his “sequester replacement” proposals for congressional consideration. This will include options for both defense and non-defense cuts.
- **March 15 – End of Debt Limit Suspension:** The Department of Treasury can use “extraordinary measures” to keep government operating past the March 15 expiration, likely into the early summer. According to CBO projections, a \$1 trillion increase is needed to get through the presidential elections in 2016. Incoming Majority Leader McConnell has already said that the Republican Senate will not allow the federal government to default on its debt obligations by breaching its borrowing authority.
- **March 31 – “Doc Fix” Expires:** There was a bicameral, bipartisan solution this year to permanently fix the issue, but it did not advance because of a lack of agreement on “pay-fors.” Discussions are already underway regarding how to best handle the “doc fix” during lame duck. However, this could morph into a major public issue if not addressed by March 2015.
- **May 31 – Expiration of Surface Transportation Programs:** Before leaving for recess this past summer, Congress moved a bill to continue funding for the federal Highway Trust Fund, which was set to be exhausted by August, as well as fund disbursements to various surface transportation programs last authorized under the Moving Ahead for Progress in the 21st Century Act (MAP-21). At the start of the new Congress, many members will be focused on securing a long-term reauthorization. House Majority Leader Kevin McCarthy (R-CA) has said he will focus on this next year. However, there are no easy revenue raisers or “pay-fors” since a gas-tax increase is off the table for a number of, including political, reasons. Pension smoothing and transfers from the general fund, which have been used in the past, are also harder to use for a multiyear bill.
- **June 30 – Ex-Im Bank Authorization Expires:** House Financial Services Committee Jeb Hensarling (R-TX) and several other conservative members have called the Ex-Im Bank government-funded corporate welfare and demanded the program be wound down. While those parties will make the same case next summer, in what is sure to be a contentious battle, there is good likelihood that the program will be reauthorized (though with reforms).

Republican leaders will try to dispense with these issues without dividing the caucus and setting off alarms that they are incapable of governing. The goal of both Speaker Boehner and likely Majority Leader McConnell is to move past these obstacles so that they can dictate an agenda of their own making.

## Major Policy Arenas to Watch in the 114th Congress

### Budget Reconciliation

With Republican majorities in both houses of Congress, GOP leaders are likely to utilize the budget reconciliation as a means of helping them advance their agenda. Under reconciliation, a procedure that allows budget-related legislation to pass with a simple majority vote, resolutions provide instructions to committees for meeting spending and revenue targets. Senate Republicans have begun to strategize about how best to use budget reconciliation. It could, for example, be used to enact a tax overhaul or changes to entitlement programs—all without Senate Democrats. Republicans may also try to use the procedure to repeal portions of the Affordable Care Act (ACA). Conservative think tanks like Heritage have come out in support of utilizing reconciliation as a means of repealing the ACA. Sen. McConnell, who will likely serve as majority leader in the 114th, is not likely to support such drastic measures but does endorse the use of reconciliation. On Wednesday, he said Republicans would be “addressing [Obamacare] in a variety of different ways” and hinted at using reconciliation by saying that “there are some things we can do with 51 votes.”

### Tax Reform

Several tax breaks, including bonus depreciation and the R&D tax credit, among others, expired at the end of 2013 and have yet to be retroactively renewed to cover 2014. These 50-plus provisions each have their own detractors but as a collective package generally enjoy wide bipartisan support. How these extenders are handled, and whether any are made permanent, will be important for how the broader tax reform fight unfolds next year. While we believe the most likely outcome is a two-year extension of most if not all of the extenders package (possibly with some small tweaks), some Republicans are arguing for a one-year extension. By only providing a retroactive solution for 2014 and vowing no extenders package in 2015, the goal would be to apply new pressure on stakeholders to support broader tax reform efforts that provide long-term certainty. There is also discussion about making certain tax extenders permanent as part of this process, which some argue could make broader, comprehensive tax reform easier to accomplish.

Sen. Orin Hatch (R-UT), who will likely assume chairmanship of the Senate Finance Committee, and Rep. Paul Ryan (R-WI), who will likely chair the House Ways and Means Committee, will be the drivers of any major tax overhaul in the next Congress. However, expect bipartisan cooperation in the process as both Hatch and Ryan have a good standing relationship with Sen. Ron Wyden (D-OR), who will serve as ranking member on the Finance Committee. In fact, Wyden and Ryan have a history of working together, even championing a Medicare overhaul framework in 2011. While most parties agree (aside from some Democrats) that tax reform should and will likely need to be revenue neutral, such arrangements still result in big winners and losers based on how legislative lines are drawn. All stakeholders should review past tax reform efforts, including retiring Chairman Dave Camp's (D-MI) draft bill, as they will serve as the foundation for legislation in the 114th Congress.

### Health Care

Republicans may pursue a full repeal of the ACA, including through a budget reconciliation process, but know that it would ultimately face a veto while Obama is still in the White House. House Majority Leader McCarthy outlined several smaller ACA fixes in an August 2014 memo, including changing the definition of a full-time employee and giving policyholders the option to keep the plan they have, which are both more likely outcomes than a full repeal. Several leaders have suggested that a separate repeal of the medical device tax is possible, with bipartisan support from some Democrats, especially those from states with industry presence.

With the “Doc Fix” expiring at the end of March, there will be renewed pressure on Congress to pass a permanent fix. However, legislators are likely to run into the same problems with finding a pay-for for the



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significant price tag, which last year the CBO scored at \$138 billion over 11 years. Additionally, funding for the Children's Health Insurance Program (CHIP) expires at the end of September; while CHIP has bipartisan support, Republicans could use their majority to propose changes to the program before the September deadline.

Sen. Lamar Alexander (R-TN) is poised to take over as Health, Education, Labor and Pensions chair and Sen. Patty Murray (D-WA) as ranking member. On the House side, Energy and Commerce Chairman Fred Upton (R-MI) will remain as chair, and the intense feud between Democrats Anna Eshoo (D-CA) and Frank Pallone (D-NJ) for ranking member will likely end in Pallone's favor.

## **Financial Services**

A unified Republican Congress will finally have the votes necessary to open up Dodd-Frank for changes next year. However, even before the new majority takes hold, Congress may alter Dodd-Frank's definition of systematically important financial institutions (SIFI), raising the threshold from \$50 billion to \$100 billion in assets.

Once the Republican Senate does settle in, expect Sen. Richard Shelby (R-AL) to return to his previous position as chair of the Senate Banking Committee, with Sen. Sherrod Brown (D-OH) serving as ranking member. Shelby, who has two years left before he reaches his term-limit did not vote for Dodd-Frank but has said he will seek sensible, bipartisan reforms to the law. One of the early initiatives of the returning chairman will be to reform the Consumer Financial Protection Bureau (CFPB). While he will have concerns with individual regulatory initiatives at the CFPB, expect legislation to focus on structural reforms to the agency. For example, legislation to change the CFPB to a five-member commission and install an independent inspector general is likely to receive consideration. In addition, Republicans would like to tie the CFPB's funding to the normal appropriations schedule so they can assert more authority over its operations.

Shelby may also tackle the Federal Reserve, which has already been under increasing pressure from the GOP-controlled House. The Senate will increase scrutiny of the central bank's interest-rate policies, as well as its regulatory duties as overseer of the nation's largest financial firms. Sen. Shelby has been critical of the Fed's regulatory performance in the run-up to the financial crisis and supported stripping the central bank of its bank-supervision authority when Congress was writing Dodd-Frank. He also voted against Janet Yellen to be chair, citing her support for the bond-buying programs and his concerns they could spark runaway inflation.

House Financial Services Chairman Hensarling, who we expect to retain the gavel next year and be joined by a minimum of 7 new Republicans on committee, will push similar (although possibly more aggressive) initiatives as those outlined above. Other issues that might see consideration include transparency efforts covering the Financial Stability Oversight Council (FSOC) and legislation making it easier for companies to raise money or to go public. We could also see a resurrection of much debated housing finance reform legislation from the House and Senate committees.

## **Energy and Natural Resources**

The Environmental Protection Agency's proposed rules governing greenhouse gas emissions from power plants released this year are scheduled to be finalized in June 2015; this will be a major wedge issue for the 114th Congress, particularly for incoming Majority Leader McConnell who is from the coal-heavy state of Kentucky. However, any legislative effort to block the rules will be vetoed by President Obama. Additionally, the permit approval for the Keystone Pipeline has been a hot-button issue for several years now. If Republicans craft a narrow bill that only impacts Keystone, the president may allow it to become law. A broader bill that fundamentally changes the power of the president in these international situations will likely draw the veto pen.

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After a long period of delay, the Department of Energy has been approving LNG export licenses at regular intervals. While legislation in this area has bipartisan support, there is a lack of consensus about which of the various approaches is best. This issue will continue to develop and is likely to get consideration at the committee level and on the House and Senate floor in the 114th Congress.

The Senate Committee on Energy and Natural Resources, currently chaired by Sen. Mary Landrieu (D-LA) who faces a runoff on December 6, will transfer power to current Ranking Member Lisa Murkowski (R-AK). There will also likely be a handful of vacancies on the House Committee on Natural Resources, given the number of incumbents on the committee who lost their races Tuesday.

## **Telecommunications**

It is very likely that Federal Communications Commission (FCC) Chairman Tom Wheeler will face uncomfortable oversight hearings and investigations from the new Republican Congress. Republicans will try to repeal the net-neutrality rules, although it's hard to see them being able to override a veto. They will probably push "process reform" legislation that Republicans say would increase transparency and accountability at the FCC—but Democrats fear it would just hamper the FCC's authority over mergers and other issues. There will be close monitoring of the Obama administration regarding international Internet governance.

With Sen. John Thune (R-SD) set to take over the Commerce Committee, there is going to be more coordination between the House Energy and Commerce and Senate Commerce committees. Many of the telecommunications bills that passed the House in the 113th Congress but never moved in the Senate, is likely where there will be the most movement, including the Federal Communications Commission Process Reform Act, International Internet Governance, net neutrality legislation, and an overall Communications Act update. Within the Communications Act update, expect much discussion over retransmission rules and video policy, rural broadband, spectrum policy, and competition in the ever-merging telecommunications industry; however, expect net neutrality to be a sticking point in this discussion, especially because the FCC depends on its controversial Title II authority.

## **Immigration**

Within the next two months, President Obama is slated to announce an executive action on immigration-related issues. The content of this order, how far the president pushes his constitutional powers, and what reception is given by Republicans will undoubtedly set the stage for immigration reform conversations in the 114th Congress. With the number of House Republicans growing next Congress, Speaker Boehner could have the room he needs to negotiate consideration of some form of immigration legislation, either on a more comprehensive level or through the passage of a number of smaller bills. In the Senate, the wild card will be the incoming chairman of the Senate Judiciary Committee Chuck Grassley (R-IA), and the uncertainty about what he might allow through the committee. Likely, new Senate Majority Leader McConnell will work with Grassley on smaller bills, but could also wrestle control of the issue from committee and make it a purely leadership-level matter if there is enough support among the caucus to work toward a larger bill.

If a comprehensive approach favored by some Republicans and virtually all Democrats does not gain traction, serious effort to pass a number of targeted-to-industry (i.e., agriculture, high-tech, lower-skill, and E-Verify) bills could ensue. If Democrats in the Senate allow these piecemeal bills to advance to the president, there could be a veto threat in play if immigration reform advocates successfully argue that undocumented workers and DREAMers are being left out.

## Education

Republicans are sure to push back against several of the Department of Education's recently released proposals and regulations. It is anticipated that the Congress will seek to reauthorize the Higher Education Act (HEA) next year, which could give incoming HELP Chairman Alexander the opportunity to block implementation of the administration's controversial gainful employment regulations or block an expansion of income-based repayments.

A possible reauthorization of No Child Left Behind is likely to include provisions barring the Department of Education's development of the Common Core standards. The Democrats' push for an overhaul of a new early childhood education program will likely stall, although there could be a push for additional block grant and voucher funding for states and Head Start.

Stakeholders are closely watching to see whether Education and the Workforce Committee Chairman John Kline (R-MN) will receive a rare waiver from House term-limit rules, as he has requested. We believe Speaker Boehner will the waiver because Kline has not served a full three terms. He took over as the Committee's ranking Republican during the 110th Congress, after Rep. Buck McKeon (R-CA) left for the same position on the Armed Services Committee in 2009. If he is unsuccessful in his request, Reps. Joe Wilson (R-SC) and Virginia Foxx (R-NC) are next in line. On the minority side, Rep. Bobby Scott (D-VA) is almost guaranteed to replace retiring Ranking Member George Miller (D-CA). Additionally, the committee is going to see a turnover of at least seven members.

## Trade

The administration is currently negotiating two proposed free-trade agreements: the Trans-Pacific Partnership (TPP) trade agreement with Japan and 10 other countries in the Asia-Pacific; and the Transatlantic Trade and Investment Partnership (T-TIP) agreement with the 28 nations of the European Union.

In order to advance these and other trade deals, most Republicans support passing Trade Promotion Authority (TPA) legislation. TPA is more commonly known as "fast-track" legislation because it expedites congressional consideration of trade agreements by allowing the president to submit a trade agreement to Congress for a straight up or down vote without any amendments. Many experts argue that giving the president this authority is essential to extracting the most concessions from foreign governments during trade negotiations, thus ensuring the most beneficial deal for America—the logic being that other countries would not extend their best offer if they know that the Congress can later amend the deal.

In the 114th Congress, the president is likely to garner the support he needs from Congress to pass TPA legislation. Unlike current Majority Leader Reid, who had opposed granting "fast track" authority to the president, Sen. McConnell has already signaled his willingness to work with the president to strengthen America's negotiating position with foreign partners. In addition, Sen. Hatch will support both the extension of TPA and passage of the trade agreements as the new Senate Finance chair. Sen. Wyden has already been working on a TPA bill that would appeal to more Democratic members.

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## House Committee Tracker: Losses, Retirements, and Other Exits

House Committee	Republicans	Democrats	Too Close To Call	Change	Republican Chairman	Democratic Ranking Member
<b>Agriculture</b>		<u>Exiting</u> : McIntyre, McLeod, Negrete, Enyart, Gallego		R: 0 D: 5	113 <sup>th</sup> : Lucas 114 <sup>th</sup> : Conaway	113 <sup>th</sup> : Peterson 114 <sup>th</sup> : Peterson
<b>Appropriations</b>	<u>Exiting</u> : Kingston, Latham, Wolf	<u>Exiting</u> : Moran, Owens, Pastor		R: 3 D: 3	113 <sup>th</sup> : Rogers 114 <sup>th</sup> : Rogers	113 <sup>th</sup> : Lowey 114 <sup>th</sup> : Lowey
<b>Armed Services</b>	<u>Exiting</u> : McKeon, Runyan	<u>Exiting</u> : Hanabusa, McIntyre, Enyart, Gallego, Maffei, S. Peters, Shea-Porter	D:Barber	R: 2 D: 7(8)	113 <sup>th</sup> : McKeon 114 <sup>th</sup> : Thornberry	113 <sup>th</sup> : Smith 114 <sup>th</sup> : Smith
<b>Budget</b>	<u>Exiting</u> : Campbell, Lankford			R: 2 D: 0	113 <sup>th</sup> : Ryan 114 <sup>th</sup> : Price	113 <sup>th</sup> : Van Hollen 114 <sup>th</sup> : Van Hollen
<b>Education and the Workforce</b>	<u>Exiting</u> : McKeon, Petri	<u>Exiting</u> : Holt, C. McCarthy, G. Miller, Tierney, T. Bishop		R: 2 D: 5	113 <sup>th</sup> : Kline 114 <sup>th</sup> : Kline, Wilson or Foxx	113 <sup>th</sup> : G. Miller 114 <sup>th</sup> : Scott
<b>Energy and Commerce</b>	<u>Exiting</u> : Cassidy, Hall, Gardner, Gingrey, Mike Rogers, Terry	<u>Exiting</u> : Braley, Christensen, Dingell, Matheson, Waxman, Barrow	D:McNerney	R: 6 D: 6(7)	113 <sup>th</sup> : Upton 114 <sup>th</sup> : Upton	113 <sup>th</sup> : Waxman 114 <sup>th</sup> : Pannlone or Eshoo
<b>Financial Services</b>	<u>Exiting</u> : Bachmann, Bachus, Campbell, Capito, Cotton, Miller, Gary	<u>Exiting</u> : C. McCarthy, G. Peters, Horsford		R: 7 D: 3	113 <sup>th</sup> : Hensarling 114 <sup>th</sup> : Hensarling	113 <sup>th</sup> : Waters 114 <sup>th</sup> : Waters
<b>Foreign Affairs</b>	<u>Exiting</u> : Cotton, Stockman	<u>Exiting</u> : Schneider	D:Bera	R: 2 D: 1(2)	113 <sup>th</sup> : Royce 114 <sup>th</sup> : Royce	113 <sup>th</sup> : Engel 114 <sup>th</sup> : Engel
<b>Homeland Security</b>	<u>Exiting</u> : Broun, Daines		D:Barber	R: 2 D: (1)	113 <sup>th</sup> : McCaul 114 <sup>th</sup> : McCaul	113 <sup>th</sup> : Thompson 114 <sup>th</sup> : Thompson
<b>Judiciary</b>	<u>Exiting</u> : Bachus, Coble	<u>Exiting</u> : Garcia		R: 2 D: 1	113 <sup>th</sup> : Goodlatte 114 <sup>th</sup> : Goodlatte	113 <sup>th</sup> : Conyers 114 <sup>th</sup> : Conyers
<b>Natural Resources</b>	<u>Exiting</u> : Broun, Daines, D. Hastings, Runyan, Southerland	<u>Exiting</u> : Hanabusa, Holt, Garcia, Horsford, Shea-Porter		R: 5 D: 5	113 <sup>th</sup> : Hastings 114 <sup>th</sup> : Bishop, Young or Gohmert	113 <sup>th</sup> : DeFazio 114 <sup>th</sup> : DeFazio, Grijalva, or Faleomavaega
<b>Oversight and Government Reform</b>	<u>Exiting</u> : Bentivolio, D. Hastings, Lankford	<u>Exiting</u> : Tierney, Horsford		R: 3 D: 2	113 <sup>th</sup> : Issa 114 <sup>th</sup> : Mica, Jordan, Chaffetz, or Turner	113 <sup>th</sup> : Cummings 114 <sup>th</sup> : Cummings
<b>Rules</b>				R: 0 D: 0	113 <sup>th</sup> : Sessions 114 <sup>th</sup> : Sessions	113 <sup>th</sup> : Slaughter 114 <sup>th</sup> : Slaughter
<b>Science, Space, and Technology</b>	<u>Exiting</u> : Broun, Hall, Stockman	<u>Exiting</u> : Maffei, S. Peters	D:Bera, Brownley	R: 3 D: 2(4)	113 <sup>th</sup> : L. Smith 114 <sup>th</sup> : L. Smith	113 <sup>th</sup> : E. Johnson 114 <sup>th</sup> : E. Johnson
<b>Small Business</b>	<u>Exiting</u> : Bentivolio	<u>Exiting</u> : Schneider	D:Barber	R: 1 D: 1(2)	113 <sup>th</sup> : Graves 114 <sup>th</sup> : Chabot	113 <sup>th</sup> : Velázquez 114 <sup>th</sup> : Velázquez

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<b>Transportation and Infrastructure</b>	<u>Exiting</u> : Capito, Coble, Daines, Gary Miller, Petri, Southerland	<u>Exiting</u> : Michaud, T. Bishop, Rahall		R: 6 D: 3	113 <sup>th</sup> : Shuster 114 <sup>th</sup> : Shuster	113 <sup>th</sup> : Rahall 114 <sup>th</sup> : DeFazio, or Nadler
<b>Veterans' Affairs</b>	<u>Exiting</u> : Runyan	<u>Exiting</u> : McLeod, Michaud, Negrete	D:Brownley	R: 1 D: 3(4)	113 <sup>th</sup> : J. Miller 114 <sup>th</sup> : J. Miller	113 <sup>th</sup> : Michaud 114 <sup>th</sup> : C. Brown or Takano
<b>Ways and Means</b>	<u>Exiting</u> : Gerlach, Griffin	<u>Exiting</u> : Schwartz		R: 2 D: 1	113 <sup>th</sup> : Camp 114 <sup>th</sup> : Ryan	113 <sup>th</sup> : Levin 114 <sup>th</sup> : Levin
<b>Intelligence</b>	<u>Exiting</u> : Bachmann, Rogers, Mike	<u>Exiting</u> : Pastor		R: 2 D: 1	113 <sup>th</sup> : Rogers, M. 114 <sup>th</sup> : Nunes	113 <sup>th</sup> : Ruppertsberger 114 <sup>th</sup> : Ruppertsberger

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## Senate Committee Tracker: Losses, Retirements, and Other Exits

Senate Committee	Democrats	Republicans	Too Close To Call	Change	Republican Chairman	Democrat Ranking Member
Agriculture, Nutrition, and Forestry	<u>Exiting</u> : Harkin, Walsh	<u>Exiting</u> : Chambliss, Johanns	D: Begich	D: 2 R: 2	113 <sup>th</sup> : Cochran 114 <sup>th</sup> : Roberts	113 <sup>th</sup> : Stabenow 114 <sup>th</sup> : Stabenow
Appropriations	<u>Exiting</u> : Harkin, Johnson, Pryor, Landrieu*	<u>Exiting</u> : Johanns	D: Begich	D: 3(5) R: 1	113 <sup>th</sup> : Shelby 114 <sup>th</sup> : Cochran	113 <sup>th</sup> : Mikulski 114 <sup>th</sup> : Mikulski
Armed Services	<u>Exiting</u> : Levin, Hagan, M. Udall	<u>Exiting</u> : Chambliss		D: 3 R: 1	113 <sup>th</sup> : Inhofe 114 <sup>th</sup> : McCain	113 <sup>th</sup> : Levin 114 <sup>th</sup> : Reed
Banking, Housing, and Urban Affairs	<u>Exiting</u> : Johnson, Hagan	<u>Exiting</u> : Coburn, Johanns		D: 2 R: 2	113 <sup>th</sup> : Crapo 114 <sup>th</sup> : Shelby	113 <sup>th</sup> : Johnson 114 <sup>th</sup> : Brown
Budget				D: 0 R: 0	113 <sup>th</sup> : Sessions 114 <sup>th</sup> : Sessions	113 <sup>th</sup> : Murray 114 <sup>th</sup> : Murray or Sanders
Commerce, Science, and Transportation	<u>Exiting</u> : Rockefeller, Walsh, Pryor		D: Begich	D: 3(4) R: 0	113 <sup>th</sup> : Thune 114 <sup>th</sup> : Thune	113 <sup>th</sup> : Rockefeller 114 <sup>th</sup> : Nelson
Energy and Natural Resources	<u>Exiting</u> : Johnson, M. Udall, Landrieu*			D: 2(3) R: 0	113 <sup>th</sup> : Murkowski 114 <sup>th</sup> : Murkowski	113 <sup>th</sup> : Landrieu 114 <sup>th</sup> : Landrieu or Cantwell
Environment and Public Works				D: 0 R: 0	113 <sup>th</sup> : Vitter 114 <sup>th</sup> : Inhofe	113 <sup>th</sup> : Boxer 114 <sup>th</sup> : Boxer
Finance	<u>Exiting</u> : Rockefeller			D: 1 R: 0	113 <sup>th</sup> : Hatch 114 <sup>th</sup> : Hatch	113 <sup>th</sup> : Wyden 114 <sup>th</sup> : Wyden
Foreign Relations				D: 0 R: 0	113 <sup>th</sup> : Corker 114 <sup>th</sup> : Corker	113 <sup>th</sup> : Menendez 114 <sup>th</sup> : Menendez
Health, Education, Labor, and Pensions	<u>Exiting</u> : Harkin, Hagan			D: 2 R: (1)	113 <sup>th</sup> : Alexander 114 <sup>th</sup> : Alexander	113 <sup>th</sup> : Harkin 114 <sup>th</sup> : Murray or Sanders
Homeland Security and Governmental Affairs	<u>Exiting</u> : Levin, Pryor, Landrieu*	<u>Exiting</u> : Coburn	D: Begich	D: 2(4) R: 1	113 <sup>th</sup> : Coburn 114 <sup>th</sup> : Collins, Johnson, or Portman	113 <sup>th</sup> : Carper 114 <sup>th</sup> : Carper
Judiciary				D: 0 R: 0	113 <sup>th</sup> : Grassley 114 <sup>th</sup> : Grassley	113 <sup>th</sup> : Leahy 114 <sup>th</sup> : Leahy
Small Business and Entrepreneurship	<u>Exiting</u> : Levin, Hagan, Landrieu*			D: 2(3) R: 0	113 <sup>th</sup> : Risch 114 <sup>th</sup> : Risch	113 <sup>th</sup> : Cantwell 114 <sup>th</sup> : Cantwell
Veterans' Affairs	<u>Exiting</u> : Rockefeller	<u>Exiting</u> : Johanns	D: Begich	D: 1 (2) R: 1	113 <sup>th</sup> : Burr 114 <sup>th</sup> : Isakson	113 <sup>th</sup> : Sanders 114 <sup>th</sup> : Sanders, Tester, or Begich
Intelligence	<u>Exiting</u> : Levin, Rockefeller, M. Udall	<u>Exiting</u> : Chambliss, Coburn		D: 3 R: 2	113 <sup>th</sup> : Chambliss 114 <sup>th</sup> : Burr	113 <sup>th</sup> : Feinstein 114 <sup>th</sup> : Feinstein



**From:** Brownstein Communications  
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## News

Brownstein Hyatt  
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### Republicans Won Control of the U.S. Senate—Now What?

Brownstein Hyatt Farber Schreck's strong Republican bicameral team is ready for the new Congress. Our team is paying close attention to the results of the recent elections and the likely impact on both immediate and long-term issues of significance to our clients. To help you navigate the changing landscape in Washington, D.C., we have compiled Brownstein's Washington Outlook as a resource. [Click here](#) to read.

Some of the top issues we foresee include:

- Upcoming committee assignments and chairmanship selection;
- A potential slowdown on judicial confirmations;
- The looming effect of 2016 on congressional oversight and the Republican Party's approach to accountability;
- Legislative priorities, likely including the Keystone XL Pipeline; trade negotiating authority; corporate tax reform; individual tax simplification; annual government spending bills coupled with a plan for raising the debt limit; non-comprehensive immigration reform (i.e., high-tech, agriculture, low-skill visas), as well as possible changes to E-Verify and EB-5 immigration issues; and various Obamacare "fixes."

Please see below for a list of Brownstein's team members with experience in Republican politics. Our team includes a former chairman of the Republican National Committee and former staff to Republican leadership, including House Speaker John Boehner's (R-Ohio) former chief of staff, Sen. Orrin Hatch's (R-Utah) former chief counsel at the Senate Judiciary Committee and Sen. Jon Kyl's (R-AZ) former legislative director, as well as a deep bench of lobbyists and lawyers with years of experience working in politics. For a full list of our bipartisan Government Relations team, see [BHFS.com](#).

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1350 I Street, NW  
Suite 510  
Washington, DC 20005

**From:** Kovacevich, Bernadette  
**Sent:** Wednesday, October 29, 2014 1:16 PM  
**To:** 'Bobbie Ormonde'  
**CC:** [invoices@westlandswater.org](mailto:invoices@westlandswater.org)  
**Subject:** RE: BHFS Client #014117 Invoices for Services Rendered through September 30, 2014  
**Attachments:** BHFS Lockbox Wiring Instructions.pdf

Bobbie,

Thank you for the update. Our wiring instructions are attached.

Again, we appreciate your accommodations very much.

Kindly,

**Bernadette Kovacevich**  
Business Process Analyst  
619.702.7571 tel

---

**From:** Bobbie Ormonde [<mailto:bormonde@westlandswater.org>]  
**Sent:** Wednesday, October 29, 2014 1:07 PM  
**To:** Kovacevich, Bernadette  
**Cc:** [invoices@westlandswater.org](mailto:invoices@westlandswater.org)  
**Subject:** RE: BHFS Client #014117 Invoices for Services Rendered through September 30, 2014

Bernadette,

Please provide wiring instructions and we can wire funds on Friday, October 31, 2014. Our Board is scheduled to approve the invoices tomorrow at 1:30 p.m.. Thank you.

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
(559) 241-6203 phone  
(559) 241-6277 fax

---

**From:** Kovacevich, Bernadette [<mailto:BKovacevich@bhfs.com>]  
**Sent:** Wednesday, October 29, 2014 12:05 PM  
**To:** 'Bobbie Ormonde ([bormonde@westlandswater.org](mailto:bormonde@westlandswater.org))'  
**Cc:** 'invoices@westlandswater.org'  
**Subject:** RE: BHFS Client #014117 Invoices for Services Rendered through September 30, 2014

Ms. Ormonde,

As we prepare for our fiscal year end close on Friday, October 31st, we note an amount of \$58,382.14 is outstanding on your account. If payment has not already been processed, would it be possible to wire or overnight a check for receipt by this Friday? I would be happy to send over our wiring instructions or FedEx Account information if needed.

Your help would be very much appreciated!

Please let me know if you have any questions or concerns.

Kindly,  
Bernadette

**Bernadette Kovacevich**  
Business Process Analyst  
619.702.7571 tel

---

**From:** Kovacevich, Bernadette  
**Sent:** Tuesday, October 14, 2014 9:57 AM  
**To:** 'Bobbie Ormonde ([bormonde@westlandswater.org](mailto:bormonde@westlandswater.org))'  
**Cc:** 'invoices@westlandswater.org'  
**Subject:** BHFS Client #014117 Invoices for Services Rendered through September 30, 2014

Bobbie Ormonde  
Westlands Water District  
Fresno, California

Dear Ms. Ormonde:

Please find attached our invoices for services rendered by Brownstein Hyatt Farber Schreck through September 30, 2014.

*As we prepare for our fiscal year close, payment before October 29<sup>th</sup> would be greatly appreciated. Thank you in advance for your help.*

Should you have any questions, please feel free to contact me at 619-702-7571.

Kindly,  
Bernadette

cc: Carol Stiggins

**Bernadette Kovacevich**  
Business Process Analyst  
**Brownstein Hyatt Farber Schreck, LLP**  
225 Broadway, Suite 1670  
San Diego, CA 92101  
619.702.7571 tel  
[BKovacevich@bhfs.com](mailto:BKovacevich@bhfs.com)

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## WIRING INSTRUCTIONS

### Lockbox (Direct Deposit) Account

KeyBank, N.A.  
1675 Broadway  
Denver, CO 80202

ABA: [REDACTED]  
SWIFT: [REDACTED]  
Account Name: Brownstein Hyatt Farber Schreck, LLP  
Account Number: [REDACTED]

*Please reference client.matter number and/or invoice number(s).*

Contact Sue Seabeck or Alisha Anderson with questions at 303.223.1100.

**From:** Bernhardt, David L.  
**Sent:** Wednesday, March 26, 2014 10:23 AM  
**To:** Jason Peltier  
**Subject:** Fwd: CA Water Questions from Senate Interior Approps Hearing  
**Attachments:** Senate Interior Appropriations Hearing Questions about CA Water.docx; ATT00001.htm

Fyi. How did yesterday's meeting turn out?

David Bernhardt

Begin forwarded message:

**From:** "Dermody, Matthew D." <[MDermody@BHFS.com](mailto:MDermody@BHFS.com)>  
**Date:** March 26, 2014, 1:19:31 PM EDT  
**To:** "Bernhardt, David L." <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)>  
**Subject:** CA Water Questions from Senate Interior Approps Hearing

David,

Here is the summary of the CA Water questions asked during today's hearing.

Let me know if you need anything else.

Thanks,

**Matthew D. Dermody**  
Policy Assistant  
**Brownstein Hyatt Farber Schreck, LLP**  
1350 I Street, NW, Suite 510  
Washington, DC 20005  
202.747.0518 tel  
[MDermody@BHFS.com](mailto:MDermody@BHFS.com)

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## **Memorandum**

Matthew D. Dermody  
Policy Assistant  
202.652.2352 tel  
202.296.7009 fax  
mdermody@bhfs.com

**DATE:** March 26, 2014  
**TO:** Interested Parties  
**FROM:** Brownstein Hyatt Farber Schreck  
**RE:** Questions regarding California Water during Senate Interior Appropriations Hearing

---

Today the Senate Appropriations Subcommittee on the Interior, Environment and Related Agencies held a hearing to consider the Fiscal Year 2015 budget request for the Department of Interior. One of the topics discussed during the question and answer portion of the hearing was the drought and resulting water shortages in Central California.

Senator Dianne Feinstein (D-CA) led this discussion and began by noting that no increased pumping of water to farmers and communities in desperate need of water has occurred, despite the state of emergency declared by the governor, and salvage data from Interior showing that no Delta Smelt or other protected fish have been killed this year. Feinstein asked Interior Secretary Sally Jewell what measures DOI was planning to take to give relief to the Central California communities, especially with another major storm approaching that could provide additional water. Jewell answered that the Fish and Wildlife Service and the Bureau of Reclamation are both exercising as much flexibility as possible to pump water to needed areas while remaining within the limits of the Biological Opinions related to the Delta Smelt and other species that require dumping of water into the Bay Delta. Jewell added that this dumping is not done just for the Smelt, but to also maintain the salinity levels of the Delta and protect farmers and communities there.

Mike Connor – who was the Commissioner of Reclamation prior to recently becoming Deputy Interior Secretary – said that the agencies are indeed doing as much as possible to give themselves latitude within the Biological Opinions to pump as much water as possible, adding that they have maximized their output in recent months when storms provided additional rain. Connor said they would do so again should the currently-approaching storm provide additional rain, and pledged to continue working with water contractors to get water to where it is needed.



**From:** Bernhardt, David L.

**Sent:** Tuesday, March 25, 2014 4:04 PM

**To:** Thomas W. (Tom) Birmingham Esq.; Jason Peltier

**Subject:** Fwd: Hearing Memo: House Interior Approps on DOI FY15 Budget

**Attachments:** March 25 2014 House Interior Approps Hearing on FY15 Budget for DOI.docx; ATT00001.htm

I thought you would be interested in the attached summary of today's hearing.

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## **Memorandum**

Matthew D. Dermody  
Policy Assistant  
202.652.2352 tel  
202.296.7009 fax  
mdermody@bhfs.com

**DATE:** March 25, 2014

**TO:** Energy Environment and Resources Strategies Group

**FROM:** Matthew D. Dermody

**RE:** House Interior Appropriations Subcommittee on FY2015 Budget Priorities for the Department of the Interior

---

Today the House Appropriations Subcommittee on the Interior, Environment and Related Agencies held a hearing on the Department of Interior's Fiscal Year 2015 budget request. Subcommittee Chairman Ken Calvert (R-CA) led the hearing along with Ranking Member Jim Moran (D-VA). The discussion focused on a number of budget items including wildfire prevention, endangered species, energy development and water conservation.

### **Opening Statements**

Chairman Calvert focused on four areas of concern in his opening remarks. First, he called for reforms to the way the federal government funds fire suppression, and expressed support for Rep. Mike Simpson (R-ID)'s bill that would allow funding for wildfire response to come in a manner similar to that of recovery for other natural disasters like hurricanes and tornadoes. Second, Calvert advocated for a permanent, long term solution to fund communities that receive Payment in Lieu of Taxes (PILT) contributions from the federal government when federal forests are conserved rather than logged. Third, he called for an overhaul and update of the Endangered Species Act, and cited the potential economic damage the listing of the Sage Grouse would have as proof that reforms are needed. Finally, Calvert noted that drought is greatly harming the environment and economies of the west, and called for DOI to use its authority to improve the situation by providing relief to affected communities, rather than making things worse by repeating the past dumping of needed freshwater into the ocean.

Ranking Member Moran began his brief statement by praising the job Secretary Jewell had done thus far, and called for a continued focus on preserving our national resources, treasures, and public health. He noted that while DOI's budget proposal is 3 percent higher than the FY14 enacted levels, the extra money needed for emergency wildfire fighting is likely to negate that increase. Moran closed by saying he hoped the committee would agree on a workable allocation

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for DOI, and that the fire season this year would be mild so that resources could be diverted elsewhere.

### **Witness Panel**

The Honorable Sally Jewell, Secretary of the Interior: While Jewell was the only witness to give testimony, she was joined at the witness table by Deputy Interior Secretary Michael Connor, Assistant Secretary for Policy, Management and Budget Rhea Suh, and Deputy Assistant Secretary for Budget, Finance, Performance, and Acquisition Pam Haze. Jewell's testimony focused on the highlights of the department's budget request. She began by stating that the overall allocation request of \$11.9 billion is sensible, and makes appropriate cuts to increase efficiency. Jewell also noted that the budget contains a proposal – almost identical to the Simpson bill – that would take fire suppression funding out of discretionary appropriations and place it into disaster funding status, adding that the recent fire cap adjustment passed by Congress would only fund the 1 percent most urgent fires. Jewell also touted support for Indian country and initiatives to reduce homelessness, poverty, and substance abuse on reservations. On conservation, Jewell testified that under this budget, the Land and Water Conservation Fund (LWCF) will be fully and permanently funded to mitigate the impacts of development on federal lands, as it was intended to be. As for energy initiatives, Jewell said that portion of Interior's budget would be increased by 40 percent to a total of \$753.2 million which would cover all sources of energy, take a landscape-level approach to development, streamline the permitting process, and ensure that taxpayers get a fair return on their investment. On water issues, Jewell stated that the budget proposes to increase the WaterSMART infrastructure program by \$9.5 million, and that DOI is also working on finding ways to fund longer-term water projects.

### **Questions and Answers**

There were several key topics that came out of the question and answer session. The first was the management of endangered species and habitats. Rep. Simpson began this topic by asking Jewell about the potential ESA listing of the Sage Grouse. Specifically, he asked where the Fish and Wildlife Service was in the process of making a decision, and to what degree had the Service collaborated with states and taken state management ideas into consideration. Jewell answered that FWS and DOI are both heavily engaged with the states, that she had personally met with the governors of many of the Sage Grouse states, and that those states that comprise the Sage Grouse Task Force are also currently comparing ideas and strategies for management of the species. Rep. Jaime Herrera Beutler (R-WA) later argued that DOI needs to reevaluate how it views species conservation, that it should take an approach that focuses not just on a single species, but on entire landscapes and ecosystems, and that this approach should be one that actually helps species grow, but also does not harm the economies of local communities that depend on the forests. Jewell answered that DOI is already making such an approach a key priority, and agreed with the need to look at conservation on a landscape level. She cited the holistic and comprehensive approach being taken with the Sage Grouse as an example of this concept, and added that agencies like FWS are using more flexibility and creativity in achieving conservation goals.

The next topic was energy development on federal lands. Ranking Member Moran brought this up, and asked about federal lands that have been leased to oil and gas companies but have not been drilled by industry. Moran asked Jewell what DOI was doing to encourage the actual use of these leases. Jewell answered that the budget proposes an annual fee on idle leases to be paid by

the lease holders. Moran then asked what DOI was doing to ensure a full return was coming to taxpayers from the use of these lands. Jewell replied that the budget contains a plan to charge oil and gas companies a fee equal to 25 percent of the cost of inspections of onshore oil and gas operations, similar to fees that are assessed for offshore drilling. She said the funds collected would also be used to streamline the permitting process for approving leases. Moran then inquired about the status of the Bureau of Land Management's proposed rule to regulate hydraulic fracturing on federal lands. Jewell's answer was rather vague and non-committal, and she simply stated that the BLM is reviewing public comments with the hope of publishing the rule sometime this year.

The third subject discussed was water and the drought taking place in the west. Rep. David Valadao (R-CA) brought this up by noting that this will be the second driest year in California history, and that the San Joaquin Valley needs help from DOI but has not received it. Specifically he cited the fact that water that could have been pumped to help farmers and communities in his district instead was pumped into the Bay Delta to serve the needs of the Delta Smelt fish. Valadao asked Jewell what flexibility DOI has to help the people of his area, and what more they can do to ease this drought. Jewell responded that the release of water into the Bay Delta was not just for the Smelt's purposes, but to maintain the salinity levels of the waters just upstream in order to protect public health, as well as the farmers and communities there. She added that FWS is working to improve flexibility, including changing the timeframe in its averaging from 3 days to 2 weeks to enable more water to be stored and eventually pumped to farmers in the Central Valley. Mike Connor also answered this question, and noted that the Bureau of Reclamation – of which he was the director until recently – has been releasing only a bare minimum of water into the Delta over the past 2 years in order to meet the needs of the Central Valley in this time of drought while still complying with the Biological Opinions that govern water levels. He called the 2008 Biological Opinion “a concern” and noted that while Reclamation is pumping as much as that opinion allows, they are indeed limited. Chairman Calvert asked if Reclamation had more flexibility under the 2005 Biological Opinion to determine necessary water allocations. Connor replied that the Bureau did have much greater flexibility under the 2005 opinion.

The final significant theme of discussion was the funding of wildfire prevention, rural schools, PILT and the LWCF. Rep. Simpson began by asking how close DOI's budget proposal to reclassify wildfire suppression is with the bill he has introduced. Rhea Suh answered that the two proposals are “nearly 100 percent in lockstep,” but that a few minor discrepancies remain. Chairman Calvert then asked Jewell if she supported the idea of linking PILT, LWCF, and rural schools funding – all of which will see their authorizations expire at the end of 2015 – into one permanent, integrated revenue stream if offsets can be found for it. Jewell answered that she thought it was a good idea. Suh said the administration as a whole had not taken an opinion on the idea, but called it “intriguing.” When Calvert asked Jewell for suggestions on offsets to pay for this, she could not name any but stated she would work with Calvert to find some if it were possible.

### **Analysis**

Overall the hearing was relatively calm and not overly acrimonious. Members of the committee spent much of the time agreeing with each other and with Jewell on the need to address wildfire funding, the need to improve Indian schools, and ways to better fund PILT. There was not much actual criticism of Jewell or Interior, except from Valadao on the water/Delta Smelt

issues. The overall process and tone of the hearing seemed much more subdued and orderly than in past years, likely due to the existence of some semblance of regular budget order this time around due to pre-agreed upon budget topline numbers. However, no timeline was given for when an Interior and Energy appropriations bill would actually be marked up.



**From:** Cobaugh, Christina M.  
**Sent:** Monday, June 17, 2013 7:24 AM  
**To:** [REDACTED]

**Subject:** BHFS Invites You to a Reception on June 20  
**Attachments:** EERS\_5.24.13.pdf

## Join Us

Please join Brownstein Hyatt Farber Schreck for an open house celebrating the launch of our new Energy, Environment and Resource Strategies Group.

Come meet our newest team members: [Larry Jensen](#) and [Luke Johnson](#) and reconnect with: [David Bernhardt](#), [Elizabeth Gore](#), [Jon Hrobsky](#), [Jacob Johnson](#), [Ryan Smith](#) and [Chris Stephens](#).

Our bipartisan group of lawyers and senior policy professionals bring a unique combination of skill and previous Federal experience to help deliver policy outcomes, project approvals or legal decisions on matters related to energy, the environment and natural resources. With collective insights gathered

from years of working as decision-makers in various government offices, we know how to best position our clients for a successful outcome before Congress, Federal administrative agencies and the Courts.

For more information regarding this group please [click here](#).

**When**

Thursday, June 20, 2013 6:00 PM - 8:00 PM

**Where**

Johnny's Half Shell  
400 North Capitol St NW, Washington, District of Columbia 20001

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**Christina M. Cobaugh**

Policy Assistant

**Brownstein Hyatt Farber Schreck, LLP**

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We provide our clients the assistance of a uniquely experienced group of legal, policy and government relations experts, professionals who have not only worked in government but have been in key positions where they have developed, implemented and defended major policies.

<b>Chief legal officers at Interior and EPA</b>	→ Members of our group have served as the chief legal officer at the Department of the Interior and the Environmental Protection Agency, and for the Bureaus of Land Management, Reclamation, Indian Affairs, and the Minerals Management Service (now the Bureaus of Ocean Energy Management and Safety and Environmental Enforcement), U.S. Fish and Wildlife Service, National Park Service, Office of Surface Mining Reclamation and Enforcement.
<b>Decision makers within Interior, EPA, and OMB</b>	→ Members of the team have served as the Assistant Administrator for Water at EPA, with responsibility for overseeing the implementation of the nation's Clean Water Act and Safe Drinking Water Act programs; the Deputy Director of BLM, which manages more than 250 million acres of public lands, the Deputy Director of the Mineral Management Service, which managed the resources of the Outer Continental Shelf; and as the Counselor to the Secretary of the Interior; and Special Assistant at the White House's Office of Management and Budget with a focus on energy, environment, and public lands.
<b>Senior Congressional Staff and Legislative Strategists</b>	→ Members of our Group have served both Republicans and Democrats in the United States Senate and the House of Representatives in a number of senior roles, including Chief of Staff, Legislative Director, Senior Policy Advisor, and Committee Staff.

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Our efforts are enhanced and supported by the Firm's Natural Resources Practice, which has nationally respected lawyers working on local, state and federal resource issues in Colorado, California, New Mexico, Arizona, Nevada, Utah and Washington, D.C.



## Energy, Environment and Resource Strategies

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### Select Matters

- Spearheaded an effort for a trade association to ensure that a costly and unnecessary mandate was not included in legislation headed for the President's desk.
- For a utility client, worked to modify onerous EPA regulations and coordinated a strategy to amend those rules, including meetings with senior agency officials and other Administration policy makers. Also enlisted a congressional strategy that brought together a coalition of Members to push for a more favorable outcome in the rules. Ultimately, the EPA amended the rules in a way that saved our client hundreds of millions of dollars.
- Provided strategic direction to a major national nonprofit foundation regarding the proposed determination of whether the African lion is an endangered species as defined by the Endangered Species Act.
- Worked alongside one of the largest federal water contractors in the United States to ensure that its members have a long-term dependable supply of water to meet project purposes.
- Represented a deepwater exploration and production company was facing a potential fatal regulatory or legislative shift, developed and executed a strategy that ensured that its voice was heard by the Congress and the Executive agencies and that potentially crippling legislation was stopped.
- Collaborated with a greenfield mining company to implement an infrastructure development program that minimizes the length of time necessary to complete the state and federal permitting process.
- Counseled a national pipeline company regarding the utilization of its assets in Indian County.
- Worked with company to successfully secure an approval for a Greenfield mine plan of operation in an area that was determined to be sensitive wildlife habitat.
- Represent a major oil and gas contractor in challenging a precedential agency action regarding the scope of the Secretary of the Interior's authority under the Outer Continental Shelf Lands Act.